

**AUMA Resolution 2019. E2****City of Medicine Hat****Responsibility for Utility Infrastructure on Private Property**

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**WHEREAS** on August 1, 2019, the Alberta Court of Appeal issued a decision which requires municipalities to operate and maintain utility infrastructure on private property which provides service to more than one parcel;

**WHEREAS** there are many municipalities where utility infrastructure on private property provides service to more than one parcel; and

**WHEREAS** the impact of the decision may have significant impacts on municipalities throughout Alberta.

**IT IS THEREFORE RESOLVED THAT** AUMA advocate for the Government of Alberta to modify the *Municipal Government Act* to clarify that a municipality should not be responsible for the repair and maintenance of a portion of a “public utility” unless it is an owner of that portion of the “public utility” and to provide transitional provisions to address existing situations where infrastructure cross parcel boundaries.

**BACKGROUND:**

As a result of the recent Alberta Court of Appeal decision in *Condo Corporation No. 0410106 v Medicine Hat (City)*, 2019 ABCA 294, the City of Medicine Hat (City) will be required to take responsibility for the operation and maintenance of privately-owned water, sewer and storm infrastructure located on multiple parcels that service more than one parcel (i.e. shared infrastructure) previously considered the responsibility of the private infrastructure owner. The Appeal Court decision affects all Alberta municipalities and may have significant financial and other impacts for them.

**Reason for extraordinary resolution**

The Alberta Court of Appeal decision was issued August 1, 2019, which was after the May 31, 2019 deadline for submissions of resolutions for consideration at the 2019 AUMA convention. The decision takes effect from the date of pronouncement. As set out below, there are significant impacts from the decision which can be mitigated by decisive legislative change.

**Further Background**

The River Ridge community is comprised of five adjoining parcels of land, each registered under separate titles with four parcels registered as Condominium Corporations. Four of the five parcels (one parcel is currently undeveloped) share some water, sewer and storm infrastructure; however, joint servicing agreements do not exist amongst the various Condominium Corporations. Shared services such as found in the five parcel River Ridge development is not uncommon in Medicine Hat and in other Alberta municipalities. The applicant Condominium Corporations applied to the Court to require the City to operate and

maintain the privately-owned water, sewer and storm infrastructure that was on privately owned lands. At the Court of Queen's Bench, the court held the City was not responsible for private infrastructure, but the decision was overturned by the Alberta Court of Appeal.

As a result, the City has been directed to operate and maintain those privately-owned parts of the River Ridge water, sanitary and storm infrastructure that service more than one parcel. As the Appeal Court decision is an interpretation of the *duty to provide a utility service* under the *Municipal Government Act*, the decision has implications beyond the River Ridge development to other existing and future developments in Medicine Hat and in other municipalities in Alberta.

### **Implications**

The decision is likely to result in municipalities experiencing increased costs for operation and maintenance of public utilities. While the decision dealt with water, sewer and storm water, it may apply to all municipal public utilities servicing more than one parcel. The decision may impact whether municipalities agree to permit joint use agreements.

The decision may cause municipalities (subdivision authorities) to impose more stringent conditions on subdivision. If municipalities impose new or more stringent development requirements and standards to address the impact, costs of development may increase.

The decision may lead to municipalities bearing increased costs. It may also result in increased costs of development being imposed on the development community, which may have a chilling impact on development.

The City of Medicine Hat seeks support for changes to the *Municipal Government Act* to clarify obligations of operation and maintenance for privately owned portions of utility infrastructure.